

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AEVOE CORP.,

Plaintiff(s),

VS.

AE TECH. CO., et al.,

Defendant(s).

Case No. 2:12-cv-00053-GMN-NJK

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO SEAL

(Docket Nos. 292, 305, 315, 357, 382)

Pending before the Court are various motions to seal. Docket Nos. 292, 305, 315, 357, and 382. The Court issued orders requiring supplemental filings to support the sealing requests. *See* Docket Nos. 394-398, 437. The Court has now received various supplemental filings. *See* Docket Nos. 402, 404, 406-408, 410, 442. The most recent supplemental filing also includes proposed redacted versions of many of the documents filed under seal. *See* Docket No. 442-1 (proposed redacted documents at issue in motion to seal at Docket No. 292); Docket No. 442-2 (proposed redacted documents at issue in motion to seal at Docket No. 305); Docket No. 442-3 (proposed redacted documents at issue in motion to seal at Docket No. 315); Docket No. 442-4 (proposed redacted documents at issue in motion to seal at Docket No. 357); Docket No. 442-5 (proposed redacted documents at issue in motion to seal at Docket No. 382). For the reasons discussed more fully below, the motions to seal are hereby **GRANTED** in part and **DENIED** in part.

I. STANDARD

The motions to seal before the Court seek secrecy for documents or parts of documents filed in relation to non-dispositive motions. The Ninth Circuit has held that there is a presumption of public access to judicial files and records, and that parties seeking to maintain the confidentiality of documents

1 attached to non-dispositive motions must make a “particularized showing” of “good cause.” *See*
2 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State*
3 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003)); *see also Pintos v. Pac. Creditors*
4 *Assoc.*, 605 F.3d 665, 678 (9th Cir. 2010). To the extent any confidential information can be easily
5 redacted while leaving meaningful information available to the public, the Court must order that
6 redacted versions be filed rather than sealing entire documents. *Foltz*, 331 F.3d at 1137.

7 **II. ANALYSIS**

8 The motions to seal discussed herein were filed by Plaintiff based on Defendants’ designations
9 of documents as confidential. Therefore, it is Defendants who are seeking to maintain the
10 confidentiality of the information, notwithstanding the fact that Plaintiff filed the motions to seal.
11 Defendants filed supplements to Plaintiff’s motions to seal. For the reasons discussed more fully below,
12 Defendants have met their burden to keep some documents (or portions of documents) secret but not
13 others.

14 **A. Docket No. 292:**

15 This motion seeks to seal portions of Plaintiff’s motion for an order to show cause (Docket Nos.
16 289, 293) and Exhibits A, B, D, E, G, and J attached to the declaration filed in support thereof (Docket
17 Nos. 290, 294). Defendants have provided two filings in support of their assertion that the information
18 at issue merits secrecy. Docket Nos. 408, 442. With respect to the Exhibits, Defendants seek primarily
19 to file redacted copies on the docket. Exhibit A contains excerpts of the transcript of the deposition of
20 Tom Hseih. *See, e.g.*, Docket No. 442 at 4. Defendants seek to redact from that exhibit information
21 related to customer names, orders, banking, sales, and factory identification. *See, e.g., id.* at 4-5.
22 Exhibit B contains excerpts of the transcript of the deposition of Feon Tan. Defendants seek to redact
23 from that exhibit information related to the number of units sold to and/or returned by S&F Corporation.
24 *See, e.g., id.* at 5. Exhibit D contains excerpts of the deposition of Henry Hseih. *See, e.g., id.* at 4.
25 Defendants seek to redact from that exhibit information related to the business relationship between
26 Henry Hseih, AE Tech and Kai Da International, as well as customer names, corporate ownership
27 information, profits, financial condition, banking, and business expenses. *See, e.g., id.* at 5. Exhibit E
28 contains excerpts of the deposition of Angie Fan. *See, e.g., id.* at 4. Defendants seek to redact from that

1 exhibit information related to banking and pricing. *See, e.g., id.* at 5. Exhibit G is AE Tech’s
2 organizational chart, which shows the names of its officers and their reporting relationships. *See, e.g.,*
3 *id.* at 3. Defendants seek to file Exhibit G under seal in its entirety. Exhibit J is an email and
4 Defendants seek to redact information related to units sold and pricing. *See id.* at 5.

5 Defendants assert that they keep the above information confidential, *see, e.g.,* Docket No. 408,
6 and that it constitutes sensitive business information, *see* Docket No. 442 at 2-3. As noted above,
7 Defendants filed proposed redacted versions of Exhibits A, B, D, E and J to leave non-confidential
8 information in those documents available to the public. *See* Docket No. 442-1. Defendants also cite
9 case law indicating that the information at issue above is traditionally sealed by courts in this Circuit.
10 *See* Docket No. 442 at 6; *see also Bean v. Pearson Educ., Inc.*, 2012 WL 2929631, *2 (D. Ariz. July 18,
11 2012) (sealing “nonpublic financial, sales, and distribution information”); *TriQuint Semiconductor, Inc.*
12 *v. Avago Techs. Ltd.*, 2011 WL 6182346, *4 (D. Ariz. Dec. 13, 2011) (“disclosing confidential business
13 dealings with third parties, [as well as] certain customer and pricing information . . . could harm [the
14 movants’] competitive standing”); *Clark v. Metropolitan Life Ins. Co.*, 2010 WL 1006823, *1 (D. Nev.
15 Mar. 16, 2010) (sealing “confidential internal business deliberations, organization, and capabilities”).
16 The Court similarly finds here that the information at issue merits secrecy and that good cause exists
17 that overcomes the public’s competing interest in accessing the information. Accordingly, this motion
18 to seal is hereby **GRANTED** with respect to Defendants’ proposed redaction of Exhibits A, B, D, E,
19 and J, as well as sealing all of Exhibit G.

20 With respect to the motion to seal Plaintiff’s motion for an order to show cause itself, Defendants
21 seek to maintain the redactions proposed by Plaintiff in its initial filing of the motion. *See* Docket No.
22 442 at 6; *see also* Docket No. 289 (redacted motion); Docket No. 293 (sealed motion). Defendants
23 argue that the redactions to page 4 of the motion relate to “profit or sales numbers [derived from] the
24 documents filed under seal [and that] [t]here are no redactions on any other pages of the public version
25 of the Motion for Order.” *See* Docket No. 442 at 6. Upon the Court’s review, Defendants have
26 misstated the information currently redacted in the motion. Most significantly, Line 3 of Page 4 redacts
27 nearly a paragraph of factual assertions with approximately 16 footnotes to citations to the record.
28 *Compare* Docket No. 289 at 4:3 *with* Docket No. 293 at 4-5. These factual assertions are not all related

1 to confidential profit or sales numbers, and some of them are clearly not sealable. For example, at least
2 some of the citations appear to be to unredacted portions of the exhibits now submitted by Defendants.
3 *See, e.g., id.* at 4 n. 20 (discussing information from H. Hsieh Dep. Tr. at 230:12-16 (Exhibit D), while
4 Docket No. 442-1 has now provided the cited portion of the transcript entirely in unredacted form). As
5 some of the information redacted in Docket No. 289 is not confidential, Defendants have failed to make
6 a particularized showing of good cause that the current redactions are proper.

7 The Court declines to comb through the factual assertions and citations in the motion to
8 determine which factual assertions are based on public information and which are based on confidential
9 information for which Defendants have now shown good cause for sealing. Instead, the Court **DENIES**
10 the request to keep Docket No. 293 sealed in its entirety based on the redacted version filed at Docket
11 No. 289. While Docket No. 293 will remain under seal, Defendants are hereby **ORDERED** to file on
12 the public docket a newly-redacted version of that motion with redactions only to information derived
13 from portions of the exhibits found to be sealable herein or to information specifically found to be
14 sealable in another order of this Court (*e.g.*, references to information derived from the sealed sanctions
15 order (Docket No. 167)). The newly redacted version of the motion shall be filed within 14 days of the
16 issuance of this order.

17 **B. Docket No. 305**

18 This motion seeks to seal portions of Plaintiff's opposition to Defendants' motion to increase
19 the injunction bond (Docket Nos. 303, 306), as well as Exhibits B, C, and D filed in support thereof
20 (Docket Nos. 304, 307). Defendants have provided two filings in support of their assertion that the
21 information at issue merits secrecy. Docket Nos. 404, 442. Defendants do not oppose the public filing
22 of Exhibits B and C, and have filed unredacted versions of those documents. *See* Docket No. 442 at 7;
23 *see also* Docket No. 442-2. Accordingly, with respect to Exhibits B and C, the motion to seal is hereby
24 **DENIED** as moot.

25 Defendants assert that Exhibit D contains testimony regarding the number of units of redesigned
26 touch screen protectors sold and shipped by AE Tech. *See* Docket No. 442 at 7. Defendants have
27 submitted a redacted version of Exhibit D with this information removed. *See* Docket No. 442-2. For
28 the reasons discussed above, *see* Section II.A., the Court finds that the information at issue merits

1 secrecy and that good cause exists that overcomes the public's competing interest in accessing the
2 information. Accordingly, this motion to seal is hereby **GRANTED** with respect to Defendants'
3 proposed redactions of Exhibit D.

4 With respect to the opposition brief itself, Defendants do not dispute that it should be filed
5 publicly in its entirety. *See* Docket No. 404 at 2 ("Because the opposition which was filed under seal
6 does not contain any sales information that opposition may also be unsealed.") Accordingly, with
7 respect to the opposition brief itself, the motion to seal is hereby **DENIED** as moot and the Clerk's
8 Office is directed to **UNSEAL** Docket No. 306.

9 **C. Docket No. 315**

10 This motion seeks to seal portions of Plaintiff's opposition to Defendants' motion to stay
11 (Docket Nos. 313, 316), as well as Exhibits A and B filed in support thereof (Docket Nos. 314, 317).
12 Defendants have provided two filings in support of their assertion that the information at issue merits
13 secrecy. Docket Nos. 407, 442. Exhibit A contains excerpts of Feon Tan's deposition in which she
14 identifies a potential customer's name. *See, e.g.*, Docket No. 442 at 8. Exhibit B contains several
15 documents, including: (1) an indemnity agreement; (2) a non-disclosure agreement; and (3) deposition
16 excerpts regarding the terms of the indemnity and non-disclosure agreements, as well as the financial
17 relationship between the Defendants. *See, e.g., id.* Defendants have filed a proposed redacted version
18 of Exhibits A and B with portions regarding the above information removed. *See* Docket No. 442-3.
19 For the reasons discussed above, *see* Section II.A., the Court finds that the information at issue merits
20 secrecy and that good cause exists that overcomes the public's competing interest in accessing the
21 information. Accordingly, this motion to seal is hereby **GRANTED** with respect to Defendants'
22 proposed redaction of Exhibits A and B.

23 With respect to the motion to seal Plaintiff's opposition brief itself, Defendants seek to maintain
24 the redactions proposed by Plaintiff in its initial filing of the brief. *See id.* at 9; *see also* Docket No. 313
25 (redacted brief); Docket No. 316 (sealed brief). Defendants argue that these redactions relate only to
26 information derived from deposition exhibits 76 and 81. *See* Docket No. 442 at 9. Upon the Court's
27 review, Defendants have misstated the source of the information at issue. Page 2 of Plaintiff's
28 opposition brief redacts information regarding the potential customer discussed above. *See, e.g.*, Docket

1 No. 313 at 2:17 and n.1 (citing deposition exhibit 73, as well as Feon Tran Tr. at 182, 183). That
2 information is derived from sources for which Defendants have sought to redact only the potential
3 customer's name. *See* Docket No. 442 at 8 (discussing proposed redactions to Exhibit A). The
4 opposition brief (Docket No. 316 at 2:16-2:18) does not identify the potential customer and the
5 information at issue in the proposed redaction is derived from portions of the cited documents for which
6 Defendants do not seek redaction (Docket No. 442-3, Exhibit A). Similarly, Page 3 of the opposition
7 brief redacts information regarding the indemnity and non-disclosure agreements discussed above, *see*,
8 *e.g.*, Docket No. 313 at 3 n.4 (citing deposition exhibits 66, 67, and Tom Hseih Tr. at 94-95), in
9 particular the parties to, dates of and reasons for the agreements, *see, e.g.*, Docket No. 316 at 3:5-6.
10 These facts are clear from the unredacted aspects of those exhibits. *See, e.g.*, Docket No. 442-3 (Exhibit
11 B) (redacted version of indemnity agreement showing publicly the date and parties to that agreement;
12 redacted version of deposition transcript at pages 94 to 95 showing publicly the parties to, date of, and
13 reason for executing the non-disclosure agreement). Lastly, although no citation is given in Plaintiff's
14 opposition brief, the redaction to Page 6 appears to be derived from information taken from deposition
15 testimony that has been publicly filed. *Compare* Docket No. 316 at 6:6-7 *with* Docket No. 442-3
16 (Exhibit B) (redacted version of deposition transcript at pages 82-84, discussing email exchange from
17 2011). As these facts are apparent from publicly available aspects of the exhibits, Defendants have
18 failed to make a particularized showing that the redactions to Plaintiff's opposition brief are appropriate.
19 Accordingly, the motion to seal as it relates to Plaintiff's opposition to Defendants' motion to stay is
20 **DENIED** and the Clerk's Office is directed to **UNSEAL** Docket No. 316.

21 **D. Docket No. 357**

22 This motion seeks to seal portions of Plaintiff's motion for reconsideration (Docket Nos. 354,
23 358), as well as Exhibits A through G filed in support thereof (Docket Nos. 356, 359). Defendants have
24 provided two filings in support of their assertion that the information at issue merits secrecy. Docket
25 Nos. 402, 442. Defendants have no objection to Exhibits B, D, E and F being filed publicly in their
26 entirety. *See* Docket No. 442 at 10. Defendants filed unredacted versions of those exhibits on the public
27 docket. *See* Docket No. 442-4. Accordingly, with respect to Exhibits B, D, E and F, the motion to seal
28 is hereby **DENIED** as moot.

1 Exhibit A is a deposition transcript and several deposition exhibits. Defendants seek to redact
2 from that exhibit information related to orders, factory identification, a potential business opportunity,
3 and product details such as cost and prices. *See* Docket No. 442 at 11. Exhibit C is a deposition
4 transcript and several deposition exhibits. Defendants seek to redact from that exhibit information
5 related to a potential business opportunity, orders, profits, inventory, costs, and sales. *See, e.g., id.* at
6 11-12. Exhibit G is an email. Defendants seek to redact from that exhibit information related to the
7 number of pieces sold. *See, e.g., id.* at 12. For the reasons discussed above, *see* Section II.A., the Court
8 finds that the information at issue merits secrecy and that good cause exists that overcomes the public's
9 competing interest in accessing the information. Accordingly, this motion to seal is hereby **GRANTED**
10 with respect to Defendants' proposed redaction of Exhibits A, C, and G.

11 With respect to the motion to seal Plaintiff's motion for reconsideration itself, Defendants seek
12 to maintain the redactions proposed by Plaintiff in its initial filing of the brief. *See* Docket No. 442 at
13 12; *see also* Docket No. 354 (redacted motion); Docket No. 358 (sealed motion). Defendants argue that
14 these redactions relate to order information, information about a license agreement, and a description
15 of S&F Corporation's business opportunity. *See, e.g.,* Docket No. 442 at 12 (identifying redactions on
16 pages 2, 7, 8 and 10 of the motion for reconsideration). Upon the Court's review, Defendants failed to
17 address numerous redactions in the motion for reconsideration. *See, e.g.,* Docket No. 354 at 3:18, 3:27,
18 4:14, 4:17, 9:22, 11:5. At least some of the proposed redacted information derives from unredacted
19 portions of the exhibits filed by Defendants. *See, e.g.,* Docket No. 354 at 3:18, Docket No. 358 at 3:18-
20 3:19 (discussing information from deposition transcript in Exhibit A at pages 85-88); *see also* Docket
21 No. 442-4 (public filing of Exhibit A, including unredacted copy of deposition transcript at pages 85-
22 88). As some of the information redacted in Docket No. 354 is not confidential, Defendants have failed
23 to make a particularized showing of good cause that the current redactions are proper.

24 The Court declines to comb through the factual assertions and citations in the motion for
25 reconsideration to determine which factual assertions are based on public information and which are
26 based on confidential information for which Defendants have now shown good cause for sealing.
27 Instead, the Court **DENIES** the request to keep Docket No. 358 sealed in its entirety based on the
28 redacted version filed at Docket No. 354. While Docket No. 358 will remain under seal, Defendants

1 are hereby **ORDERED** to file on the public docket a newly redacted version of that motion with
2 redactions only to information derived from portions of the exhibits found to be sealable herein or to
3 information specifically found to be sealable in another order of this Court (*e.g.*, references to
4 information derived from the sealed sanctions order (Docket No. 167)). The newly redacted version
5 of the motion shall be filed within 14 days of the issuance of this order.

6 **E. Docket No. 382**

7 This motion seeks to seal portions of Plaintiff's reply brief in support of its motion for
8 reconsideration (Docket Nos. 380, 383), as well as Exhibits A, B, and C submitted in support thereof
9 (Docket Nos. 381, 384). Defendants have provided two filings in support of their assertion that the
10 information at issue merits secrecy. Docket Nos. 402, 442. Defendants do not object to the public filing
11 of Exhibits A and C, and have publicly filed unredacted versions of those exhibits. *See* Docket No. 442
12 at 12-13; *see also* Docket No. 442-5. Accordingly, with respect to Exhibits A and C, the motion to seal
13 is hereby **DENIED** as moot.

14 Exhibit B is an email. Defendants seek to redact from that exhibit information related to the
15 price and number of units ordered. *See* Docket No. 442 at 12-13; *see also* Docket No. 442-5. For the
16 reasons discussed above, *see* Section II.A., the Court finds that the information at issue merits secrecy
17 and that good cause exists that overcomes the public's competing interest in accessing the information.
18 Accordingly, this motion to seal is hereby **GRANTED** with respect to Defendants' proposed redaction
19 of Exhibit B.

20 With respect to the motion to seal Plaintiff's reply brief itself, Defendants acknowledge that the
21 redacted information on page 3 is not properly redacted, but argue that the information on page 5 relates
22 to a business opportunity of S&F Corporation that should remain confidential. *See, e.g.*, Docket No.
23 442 at 12; *see also* Docket No. 380 (redacted reply); Docket No. 383 (sealed reply). Upon the Court's
24 review, Defendants failed to address numerous redactions in the motion for reconsideration. *See, e.g.*,
25 Docket No. 380 at 2:27, 8:8, 8:12. As some of the information redacted in Docket No. 380 is not
26 confidential, Defendants have failed to make a particularized showing of good cause that the current
27 redactions are proper.
28

1 The Court declines to comb through the factual assertions and citations in the reply to determine
2 which factual assertions are based on public information and which are based on confidential
3 information for which Defendants have now shown good cause for sealing. Instead, the Court **DENIES**
4 the request to keep Docket No. 383 sealed in its entirety based on the redacted version filed at Docket
5 No. 380. While Docket No. 383 will remain under seal, Defendants are hereby **ORDERED** to file on
6 the public docket a newly redacted version of that reply with redactions only to information derived
7 from portions of the exhibits found to be sealable herein or to information specifically found to be
8 sealable in another order of this Court (*e.g.*, references to information derived from the sealed sanctions
9 order (Docket No. 167)). The newly redacted version of the reply shall be filed within 14 days of the
10 issuance of this order.

11 **III. CONCLUSION**

12 For the reasons discussed more fully above and for good cause shown, Plaintiff's motions to seal
13 are hereby **GRANTED** in part and **DENIED** in part as follows:

- 14
15 • The motion to seal at Docket No. 292 is **GRANTED** in part and **DENIED** in part. The
16 motion is **GRANTED** with respect to Defendants' proposed redaction of Exhibits A, B,
17 D, E, and J, as well as the sealing of Exhibit G in its entirety. The motion is **DENIED**
18 with respect to the Plaintiff's motion for an order to show cause. Docket No. 293 will
19 remain under seal, but Defendants are **ORDERED** to file, within 14 days of this order,
20 a newly-redacted version of that motion consistent with the Court's instructions above.
21
- 22 • The motion to seal at Docket No. 305 is **GRANTED** in part and **DENIED** in part. The
23 motion is **DENIED** as moot with respect to Exhibits B and C, which have now been
24 publicly filed by Defendants. The motion is **GRANTED** with respect to Defendants'
25 proposed redaction of Exhibit D. The motion is **DENIED** as moot with respect to
26 Plaintiff's opposition brief. Accordingly, the Clerk's Office is **DIRECTED** to unseal
27 Docket No. 306 in its entirety.
28

- 1 • The motion to seal at Docket No. 315 is **GRANTED** in part and **DENIED** in part. The
2 motion is **GRANTED** with respect to Defendants' proposed redaction of Exhibits A and
3 B. The motion is **DENIED** with respect to Plaintiff's opposition brief to Defendants'
4 motion to stay. Accordingly, the Clerk's Office is **DIRECTED** to unseal Docket No.
5 316 in its entirety.
6
- 7 • The motion to seal at Docket No. 357 is **GRANTED** in part and **DENIED** in part. The
8 motion is **DENIED** as moot with respect to Exhibits B, D, E, and F, which have now
9 been publicly filed by Defendants. The motion is **GRANTED** with respect to
10 Defendants' proposed redactions of Exhibits A, C, and G. The motion is **DENIED** with
11 respect to Plaintiff's motion for reconsideration. Docket No. 358 will remain under seal,
12 but Defendants are **ORDERED** to file, within 14 days of this order, a newly-redacted
13 version of that motion consistent with the Court's instructions above.
14
- 15 • The motion to seal at Docket No. 382 is **GRANTED** in part and **DENIED** in part. The
16 motion is **DENIED** as moot with respect to Exhibits A and C, which have now been
17 publicly filed by Defendants. The motion is **GRANTED** with respect to Defendants'
18 proposed redaction of Exhibit B. The motion is **DENIED** with respect to Plaintiff's
19 reply brief. Docket No. 383 will remain under seal, but Defendants are **ORDERED** to
20 file, within 14 days of this order, a newly-redacted version of that brief consistent with
21 the Court's instructions above.
22

23 IT IS SO ORDERED.

24 DATED: November 27, 2013

25 
26 _____
27 NANCY J. KOPPE
28 United States Magistrate Judge